IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ex. Subedar Lala Ram. Versus Union of India & ors.

S.B. Civil Writ Petition No. 2452/2007

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Date of Order: May 07, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.S. K. Nanda, for the petitioner.
Mr.Ravi Bhansali, for the respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of the findings of conviction and sentence recorded by the General Court Martial vide Annx.8 and Annx.9 dated 3-6-2006, as also seeks quashing of the confirmation Minute Annx.12 dated 7.12.2006 and reinstate him in service.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was court martialled by the General Court Martial for the following charges:-

> " First Charge, Army Act, Section 46 (a): Disgraceful conduct of an unnatural kind, in that he, at Jodhpur, on the night intervening 04 Jun 2004 and 05 Jun 2004, committed an unnatural offence on the person

> of No.6946807 H Sep. (SHGD) B Mondal of the same unit.
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> Second Charge, Army Act, Section 46 (a): Disgraceful conduct of an unnatural kind, in that he, at Jodhpur, on the night intervening 28 October 2004 and 29 October 2004, with indecent intent sat naked on the chest of No.6946807H Sep (SHGD_ B Mondal of the same unit and told the said Sep B. Mondal, "You take my penis in mouth or hold my penis and masturbate or take penis inside from anus" or words to that effect."

He was found guilty as the charges having been proved and sentenced for four years' and dismissal from service. However, the finding or sentence were subject to confirmation. Thereafter the findings of conviction and sentence have been confirmed by the Confirmation Authority, against which the petitioner preferred a petition under Section 164 (2) of the Army Act, 1950 to the Chief of the Army Staff, which has not been decided so far. Hence this writ petition.

It is contended by the learned counsel for the petitioner that the Army Authorities were required to decide the petition filed by the petitioner under Section 164 (2) of the Army Act within one month from the date it was received by the Authority.

Learned counsel for the respondents submits that Section 164 (2) of the Army Act does not prescribe any outer limit for deciding such a petition and it only provides that any person subject to this Act who considers himself aggrieved of the

finding or sentence of any Court Martial which has been confirmed, may present a petition to the Central Government, the Chief of Army Staff substituted by the Act of 1995, or any prescribed Officer superior in command to one who confirmed such finding or sentence and the Central Government, the Chief of Army Staff or other prescribed Officer, as the case may be, may pass such order thereon as it or he thinks fit. Learned counsel for the petitioner submits that regulation 365 (j) of the Regulations for the Army provides that every petition, after promulgation of the proceedings of a court martial, will be dealt with expeditiously and every endeavour will be made to dispose it of within a period not exceeding one month from the date of its receipt by the authority addressed. He has relied on a Division Bench decision of this Court in Sub Maj. V.S. Tiwari & ors. Vs. The Union of India & ors., D.B. Civil Misc. Application No.70/2003 in D.B. Civil Special Appeal No.383/2003 decided on 18-7-2003, suspending the sentence awarded to the petitioners therein.

Learned counsel for the respondents submits that the Regulations for the Army Staff are non-statutory and, therefore, the same have no binding force.

Keeping in view the nature of the charges having been proved by the Court Martial and the fact that the matter is pending before the Chief of the Army Staff by way of a petition

under Section 164 (2) of the Army Act, without commenting on the merit of the case which may prejudice the petition filed by the petitioner before the Chief of the Army Staff, this writ petition can be disposed of by directing the respondent No.2 the Chief of the Army Staff to consider and decide the petition filed by the petitioner under Section 164 (2) of the Army Act within four months from today.

With these directions, the writ petition stands disposed of. There shall be no order as to costs.

(H.R. PANWAR), J.

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